

Upon review, the court will treat plaintiff's objections filed on May 13, 2005, and his above response to defendants' motion as amendments to his complaint. Based upon such amendments to his complaint, the motion of defendants Long and Sweigert for more definite statement will be denied. Plaintiff alleges defendants Long and Sweigert were aware of defendant Koon's behavior that violated plaintiff's constitutional rights, and took no action to prevent it. Although plaintiff's allegations against these defendants may not be sufficient to survive a motion for judgment on the pleadings or for summary judgment, they are sufficient to proceed at this stage in the process.

IT IS, THEREFORE ORDERED that plaintiff's objections filed on May 13, 2005, and his response filed on September 1, 2005, to defendants' motion to dismiss and/or for more definite statement are treated as amendments to plaintiff's original complaint [10, 22]. It is further

ORDERED that defendants' motion to dismiss and/or for more definite statement is treated as a motion for more definite statement and is denied [14]. It is further

RECOMMENDED that the motions of defendants Lamour and Leucknotte to dismiss for failure to exhaust administrative remedies are denied, without prejudice [25, 29].

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. If additional time is needed, a motion for an extension of time must be filed within twenty days. The motion should state the reasons for the request. *See Nash v. Black*, 781 F.2d 665, 667 (8th Cir. 1986) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); *Messimer v. Lockhart*, 702 F.2d 729 (8th Cir. 1983). Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal.

Dated this 12th day of December, 2005, at Jefferson City, Missouri.

/s/

WILLIAM A. KNOX
United States Magistrate Judge